No. 11705

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM I. HEFFRON, Trustee of the Estate of Quartz Crystal Products Co., a limited partnership composed of Raymond I. Biggy, John W. Buol and James F. Collins, Bankrupt,

Appellant,

vs.

U. S. MACHINERY COMPANY,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

APPELLANT'S OPENING BRIEF.

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Appellant,

vs.

U. S. MACHINERY COMPANY,

Appellee.

APPELLANT'S OPENING BRIEF.

Statement of Issues Involved.

I.

That the conditional sales contracts between the bankrupt and the U. S. Machinery Company are invalid and void as to the Trustee and as to the creditors of the bankrupt under and by virtue of the provisions of Section 2980 of the Civil Code of the State of California, in that the said contracts were not recorded within the time prescribed in said Section.

II.

That the amount due the U. S. Machinery Company by the bankrupt under said contracts was the sum of

$2,368.15, and the receipt of $3,700.00 by the said U. S. Machinery Company from the sale of the equipment under said contracts left a surplus due and owing to the Trustee and the estate herein in the amount of $1,331.85.

Statement of the Case.

On January 28, 1947, an order was made by the Hon. Hubert F. Laugharn, Referee in Bankruptcy, upon the Petition in Reclamation of appellee. [Tr. pp. 57-58.] Appellee had sought possession of certain machinery and equipment in possession of appellant. [Tr. pp. 14-19.] The said order of January 28, 1947, determined that the said personal property was an asset of the bankrupt estate; that appellee was not entitled to possession thereof, and that there was owing by the appellee to the appellant the sum of $1331.85.

Appellee filed a Petition for Review on the sole grounds:

> "that each of said agreements was executed on December 14, 1944, and recorded on December 18, 1944, and is valid as to the Trustee herein and the creditors of this estate and that the said order, and the whole thereof, is erroneous and that the Honorable Referee herein erred in refusing to grant the relief prayed for in said Petition for Reclamation of this petitioner." [Tr. p. 60.]

On June 6, 1947, the Hon. Leon R. Yankwich, Judge of the United States District Court, filed a written opinion in the above-entitled case, together with an order wherein the prior order of the Referee, dated January 28, 1947, was reversed. [Tr. pp. 123-124.] From that order, appellant has taken this appeal. [Tr. p. 135.]

Statement of Facts.

The bankrupt was engaged in the development, maintenance, and operation of a mine in Calaveras County, California, from which quartz, crystals, and other minerals were extracted.

In September, 1944, the bankrupt entered into two separate and different *oral* contracts with appellee, for the purchase and sale of certain mining equipment and machinery. On September 22, 1944, the bankrupt paid appellee the sum of $100.00 upon one of the said oral contracts covering the purchase of

1 Trommel, complete as inspected, including trunions, chain, sprocket and thrust roller,

1 100-ft. Conveyor, 24", complete with belt,

1 Byron Jackson Pump and Motor,

1 3-tooth Rooter. [Tr. p. 159.]

On November 10, 1944, the oral contract covering the aforesaid mining equipment and machinery was reduced to a written conditional sales agreement by appellee, for the total purchase price of $3,645.00 plus sales tax, and on that date the bankrupt paid to appellee the sum of $834.02, as part payment on said contract. [Tr. pp. 66-70, 159.] Said contract was signed by Raymond L. Biggy, one of the partners of the bankrupt, on the same date; John W. Buol and James F. Collins, the other two partners of the bankrupt, signed and executed said contract on *November 14, 1944.* [Tr. p. 117.]

On November 14, 1944, said contract was mailed to the appellee at its office in Sacramento, California. [Tr. p. 117.]

Said contract was not recorded by appellee until December 18, 1944, in Calaveras County, California. [Tr. p. 70.]

Delivery of the mining machinery and equipment covered by said contract was made in two different loads to the mine of the bankrupt, the last being delivered on November 16, 1944.

On September 26, 1944, the bankrupt paid appellee the sum of $625.00, covering the purchase of one "60" Caterpillar Tractor No. PA-3361, with 10-foot dozer blade. [Tr. p. 159.] On September 29, 1944, said tractor was delivered to the mine of the bankrupt. On November 10, 1944, the oral contract covering said tractor was reduced to a written conditional sales agreement by the appellee, for the total purchase price of $2500.00 plus sales tax. [Tr. pp. 61-65.] Said contract was signed by Raymond I. Biggy, one of the partners of the bankrupt, on the same date, and the other two partners signed and executed the same on November 14, 1944, on which date said contract was mailed to the appellee at its office in Sacramento, California. [Tr. pp. 46, 54.]

Said contract was not recorded by appellee until December 18, 1944, in Calaveras County, California. [Tr. p. 65.]

The bankrupt had creditors who had no actual knowledge of said contracts and who became creditors of the bankrupt while said property covered by both contracts was in possession of the bankrupt and before said con-

tracts were recorded, and who are still creditors with provable claims filed in the bankruptcy proceedings. [Tr. p. 55.]

The total purchase price, including sales tax, on the mining machinery and equipment covered by the two contracts, amounted to $6,298.62. [Tr. pp. 61 and 66.] Payments on said contracts were made by the bankrupt in various installments, and at the time of the filing of the bankruptcy proceeding there was due appellee on said contracts the sum of $2,368.15. [Tr. p. 166.]

On January 8, 1946, appellee informed one of the partners of the bankrupt that it had sold portions of the personal property covered by the said conditional sales contract on January 7, 1946, to one Pete De Michelis for $3,700.00 said property, however, then being in the possession and control of the bankrupt. [Tr. pp. 173, 174; 39.] Appellee informed said partner of the bankrupt that it could get the property back from the said Michelis by the payment of $4,700.00, or a $1,000.00 bonus; appellee stated that it had sold said property to Michelis with the understanding that appellee might not be able to make delivery thereof. At that time bankrupt was in default on payments under the terms of said conditional sales contract.

No notice of forfeiture of the interest of the bankrupt under said conditional sales contracts was given by apellee prior to the purported and attempted sale to Michelis. [Tr. p. 56.] Michelis thereafter tried, unsuccessfully, to

get possession of the property, and on February 21, 1946, appellee filed certain claim-and-delivery actions in the Superior Court of the State of California, Calaveras County, alleging that on that date it was the owner and entitled to possession of all the property covered by the two conditional sales contracts, and that there was then due under one of the contracts the sum of $849.67, and under the other contract the sum of $1,622.48, although at that very same time appellee had in its possession the said sum of $3,700.00 paid by Michelis on January 7, 1946. [Tr. pp. 79-86; 93; 100; 148.]

No trial has been had on the said claim-and-delivery actions. Appellee has submitted to the jurisdiction of this court to try the issues therein involved by reason of its Petition for Reclamation. [Tr. pp. 14-19.]

Appellant has elected to adopt the aforesaid sale made to Michelis by appellee for the sum of $3,700.00. [Tr. p. 56.] After payment of the balance due appellee, as aforesaid, from the $3,700.00 in its possession, there is a balance of $1,331.85 due appellant. [Tr. p. 56.]

The foregoing Statement of Facts is in substance identical to the Findings of Fact of the Referee in Bankruptcy herein [Tr. pp. 53-57], and it is upon these facts that the Honorable District Court Judge based his aforesaid order of June 6, 1947.

It is particularly noteworthy that the appellee has admitted in its Petition of Reclamation that the conditional sales contracts were made and entered into on November

Specification of Errors.

Appellant respectfully submits that the Honorable District Court erred in holding that the aforesaid two conditional sales agreements were recorded by appellee within twenty days from execution, as required by Section 2980, California Civil Code.

Statement of Jurisdiction.

Jurisdiction on this appeal is derived from the following:

Bankruptcy Act, Sec. 24(a);
28 U. S. C. A., Sec. 225 (Judicial Code, Sec. 128);
General Order XXXVI.

Specification of Errors.

Appellant respectfully submits that the Honorable District Court erred in holding that the aforesaid two conditional sales agreements were recorded by appellee within twenty days from execution, as required by Section 2980, California Civil Code.

Statement of Jurisdiction.

Jurisdiction on this appeal is derived from the following:

Bankruptcy Act, Sec. 24(a);
28 U. S. C. A., Sec. 225 (Judicial Code, Sec. 128);
General Order XXXVI.

10, 1944. Paragraphs III and IV of appellee's petition expressly set forth these admissions. [Tr. pp. 14 and 15.] In addition, the appellee, in its complaint in claim and delivery filed in the Superior Court of the State of California, in and for the County of Calaveras, Case No. 3172, against the bankrupt, admitted, in Paragraph IV thereof, that the conditional sales contract relating to the Caterpillar tractor was made and entered into on *November 10, 1944,* and that said tractor was delivered on that date to the bankrupt. [Tr. p. 94.]

Furthermore, appellee in its claim and delivery complaint against bankrupt in said county for the remaining equipment, case No. 3171, admitted again, in paragraph IV thereof, that the conditional sales contract relating to that equipment was made and entered on *November 10, 1944,* and that said equipment was delivered to the bankrupt on said date. [Tr. p. 80.]

It is also noteworthy that not only do the conditional sales contracts themselves acknowledge receipt of part payment on the purchase price, but Mr. Clyde W. Henry, president of appellee, admitted that for fifteen days prior to December 10, 1944, to wit, since on or about November 25, 1944, he knew that he had received approximately $2,000.00 in part payment on these two contracts. [Tr. p. 162.]

It is also significant that the invoices by which appellee sold the equipment in question to the bankrupt are dated October 4, 1944. [Tr. pp. 71-73.]

POINT I.

The Conditional Sales Contracts Between the Bankrupt and the U. S. Machinery Company Are Invalid and Void as to the Trustee and as to the Creditors of the Bankrupt Under and by Virtue of the Provisions of Section 2980 of the Civil Code of the State of California, in That the Said Contracts Were Not Recorded Within the Time Prescribed in Said Section.

Section 2980, Civil Code of California, as it relates to the case at bar, provides as follows:

> ". . . Every conditional sales contract . . . must be acknowledged . . . and must be recorded *within twenty days after* its execution in the county where *the buyer* . . . respectively resides at the time *he executes such contract* . . ., or in case *the buyer* . . . is a non-resident of the state, in the . . . county . . . where the property involved is located at the time the contract . . . is executed by *the buyer* . . . otherwise it shall be void as to the lien . . . of the seller . . . against . . . those having no actual knowledge of the contract . . . who become *creditors of the buyer* . . . while said property is in the possession of . . . (the buyer)." (Italics ours.)

Appellant respectfully submits that "execution" as used in said statute means execution by the *buyer alone* —and does not include execution by the seller, under a conditional sales contract.

The purpose of Section 2980, Civil Code, is to protect the creditors of the buyer of mining machinery and equipment in whose place appellant stands in this case.

As stated in *Wheeler v. Kraner,* 21 Cal. App. (2d) 460, quoting *In re Great Western Petroleum,* 16 Fed. Supp. 247:

> "The object of the section was to protect purchasers in good faith, encumbrancers, or those who had extended credit to a person in possession of such equipment against unrecorded claims of sellers under a conditional sales contract."

This purpose is reaffirmed in the *Wheeler* case, at page 463, in the following language:

> "The object, of course, of the Legislature, was and is to protect persons dealing with operators of mining property when the equipment and machinery used thereon is bought on conditional sales contract."

Furthermore, in the case of *Seaboard Acceptance Corp. v. Shay,* 214 Cal. 361, in commenting on the invalidity of former Section 2980, Civil Code, as it existed in 1931, the Court said:

> "5. There probably would have to be inserted a provision limiting the application of the statute to those dealing with the buyer and excluding those dealing with the seller."

Thus, Section 2980 is a legislative aid to creditors of persons buying mining equipment on conditional sales contracts. Its object is not to aid the seller of such mining equipment to evade the law by refraining from signing conditional sales contracts, thus delaying the date within which recordation is required, but rather to require recordation at the earliest moment of effective consumation of the conditional sales contract between the parties.

Nowhere does Section 2980 mention the seller of the conditional sales contract as a person whose signature is necessary in order to effectuate "execution." The statute is replete with references to the *buyer,* as indicated in our italicized quotation above.

It is therefore respectfully submitted that where, as in the case at bar, a seller has actually delivered possession of mining equipment to a buyer under a conditional sales contract and has delivered such contract to the buyer, and the buyer has executed the same and delivered the same to the seller, together with payment on account of said contract, the contract must surely be deemed executed within the meaning of Section 2980, Civil Code.

It is elementary that the nature of an instrument is determined by its legal effect and not by what the parties call it. (*Smith v. Grove,* 47 Cal. App. (2d) 456.) Thus, in the case at bar, the two agreements in question are conditional sales contracts, and both the Referee and the District Court have so found. It is therefore immaterial that the documents on their face are described as leases.

It is respectfully submitted that the conditional seller cannot under such circumstances be permitted to succeed in its present claim since it withheld signature from the conditional sales agreement and thereby delayed the commencement of the twenty-day period within which recordation is required to be made. For to allow such a specious claim on the part of the conditional seller would be to afford an opportunity for fraud on the creditors of the buyer, exactly contrary to the intention of the Legislature in enacting this statute.

Not every so-called contract requires a signature by both parties to accomplish "execution." For example,

it is obvious that a bill of sale, or a promissory note or a deed is fully effective upon signature by one party and delivery of the document to the other party.

This general rule has been recognized from an early date. In 6 R. C. L. 640, 641, the following is stated:

> "Even contracts which were at common law required to be in writing and under seal were not required to be signed. . . . But the fact that one of the parties has signed the contract does not require that the other party should do likewise. A written contract not required to be in writing is valid if one of the parties signs it and the other acquiesces therein. Acceptance of a contract by assenting to its terms, holding it and acting upon it, may be equivalent to a formal execution by one who did not sign it. (*Vogel v. Pekoc,* 157 Ill. 339, 42 N. E. 386; *Sellers v. Green,* 172 Ill. 549; 50 N. E. 246.) Bills of sale, promissory notes, and many other writings are signed by one of the contracting parties and delivered to another who receives the same and orally or by conduct acquiesces therein."

California has recognized the principle that execution of certain contracts may require the signature of only one party thereto. In *Luckhart v. Ogden,* 30 Cal. 547, 548, it was held as follows:

> "The execution of the contract was not denied by the defendants, but expressly admitted; but the objection raises the question of its validity, because it was executed by only one of the parties to it. The answer to this objection is, that the consideration for the defendants' covenants contained in the contracts executed by them was rendered and performed by the plaintiff by the conveyance to them of his interest in the mine, and thus was completely

> executed, while on their part the consideration for such conveyance was still to be rendered and performed, and thus was executory. The contract did not provide for the performance of anything by the plaintiff, and therefore it was not necessary he should sign it. The judgment of the Court is that the contract was well executed."

Similarly, it has been held that a chattel mortgage is valid without the affidavit of the mortgagee. *Pacific States Savings & Loan Company v. Hoffman,* 134 Cal. App. 604.

See also:

Bell v. Central Bank, 89 Cal. App. 551.

The Honorable District Court, in its opinion herein, relies upon a reference from 33 C. J. S. 121, to support the position that execution of a conditional sales contract requires the conditional vendor to sign the same. However, the very reference cited by the Honorable District Court states in part as follows, in defining the term "execution":

> ". . . in fact, in every application of the word, there is, when it is used in its strict sense, the same meaning, namely, that of completing or performing what the law either orders or validates."

Thus, each case depends upon its particular facts to determine what is the criterion of the term "execution."

For the Honorable District Court to state that the mere use of the term "execution" imports the necessity of the conditional vendor's signature to the contracts herein involved, is in effect an *assumption* of the very matter in issue, rather than the *resolving* of the issue.

Section 1776, California Civil Code expressly provides that the unpaid seller of goods loses his lien thereon when the buyer lawfully obtains possession of the goods, as happened in the case at bar.

This result is in accordance with the doctrine of *Wheeler v. Kraner, supra,* and with the provisions of Section 3440, Civil Code, which, together with Section 2980, Civil Code, were designed to protect creditors of the buyers of mining machinery under conditional sales contracts. It is incumbent upon a conditional vendor who wishes to preserve his lien on mining equipment, therefore, to comply strictly with Section 2980, Civil Code—and not to thwart its obvious purpose by withholding signature from the document, to avoid the commencement of the twenty-day recordation period.

There is no injustice to the conditional vendor in this requirement, for even if he has no lien on the property in question, he still has a right, as an unsecured creditor, to be paid the purchase price therefore. (Sections 1772 and 1773, Civil Code.)

Consistent with this interpretation of Section 2980, Civil Code are other related cases where the signature of one of the parties to a contract was deemed unnecessary under the circumstances.

In *California Jewelry Company v. Provident Loan Association,* 6 Cal. App. (2d) 506, it was held that a written memorandum of a jewelry broker's receipt of jewelry from a wholesaler for examination and purchase on wholesaler's approval of his selections became the contract of the parties when signed and delivered by the broker to the wholesaler and accepted by the latter, notwithstanding that the wholesaler's signature was lacking. The Court cited 6 Cal. Jur. 233.

Similarly, in *Winter v. Kitto,* 100 Cal. App. 302, the Court cites with approval from *Cavanaugh v. Casselman,* 88 Cal. 543, 549, as follows:

> "It is not the rule that a contract which on its face purports to be *inter partes* must invariably be executed by all whose names appear in the instrument before it will be binding on any. One reason why it is held in many of the cases that an agreement is not to be operative upon one until it has been signed by another, is that such signing is the consideration upon which the first signer agrees to be bound; but when a sufficient consideration for the agreement on the part of the first signer is shown to authorize its enforcement he cannot be released therefrom unless he shall show clearly that there were other considerations for his signing the agreement than those named in the instrument."

Also in the *Cavanaugh* case, the Court quotes with approval from Bishop on Contracts, Section 348, as follows:

> "'If by parol stipulation, or *a fortiori* if by the writing itself, the contract was not to be deemed complete until other signatures should be added, it without such addition will not bind those who have signed it; but if nothing of this appears the parties signing will be holden though even on the face of it the signatures of others were contemplated by the draughtsman'."

The same rule is stated in *Kurtz v. Forquer,* 94 Cal. 91.

In *Reedy v. Smith,* 42 Cal. 245, 250, there was a sult on a contract between plaintiff and defendants, whereby defendants were to build a dam. Plaintiff sought damages

for the failure of defendants to build same. The contract was signed by the defendants but not by the plaintiffs. The Court held as follows:

> "Under the circumstances revealed by the evidence, I think the Court properly found that the contract had been executed and was binding upon both parties. Both had acted upon it as a binding contract. The plaintiffs certainly have been estopped from denying that it had become binding upon them, had suit been brought upon it by the defendants. At any rate, the fact that a verbal contract, containing precisely the same conditions, was entered into, is admitted, and no question of the Statute of Frauds is raised, and after this distinct admission of the contract could not be."

In *Gelfan v. Bessolo & Gualano, Inc.,* 125 Cal. App. 214, 218, it was held that in an action on a contract of guaranty there was no error in admitting the contract in evidence over the objection of defendant surety company that the contract was incomplete and not binding because a second surety had not signed, where, from an examination of the contract, it did not appear that said second surety was a necessary party to the contract by its terms or one that was necessary to the contract so that it could be operative. It was further held that there was sufficient evidence in the record to support the finding that the delivery of the contract was not conditioned upon the signing by the second surety, and that where there was at most but a conflict in the evidence, the finding of the trial court would be affirmed on appeal. The evidence showed that plaintiff, a painting contractor, was permitted to substantially perform his contract with the general contractor; and it was therefore held that he was entitled to

enforce the contract guaranteeing payment of the money to him, even though he had not signed it.

In *Melton v. Story,* 113 Cal. App. 609, 611, a contract relating to brokerage commission, whose caption stated it was an agreement between defendants and two other persons and a bond house, was held to have been executed and binding upon the parties under the circumstances. The Court held that the face of the instrument failed to show the signatories signed upon consideration that the other two persons would sign, and that there was an entire absence of all evidence concerning delivery being conditional upon the obtaining of other signatures.

Similarly, in the case at bar there is an absence of any evidence concerning the delivery of the conditional sales contracts by the bankrupt to appellee being conditional upon signature by the appellee.

From the foregoing, it is respectfully submitted that, where a conditional vendee of mining equipment has received such equipment and made part payment thereon and signed the conditional sales contract presented to him by the conditional vendor and mailed the contract back to the vendor, such contract is thereupon to be deemed executed, within the meaning of Section 2980, Civil Code.

Furthermore, it is respectfully submitted that, even if under other circumstances the signature of the conditional vendor might be necessary to accomplish "execution," under the circumstances of the case at bar execution became complete on or before November 18, 1944, by which date the contract had been signed by the conditional vendee, mailed to the conditional vendor, and payment had been made to the conditional vendor thereon and had been accepted as such and the machinery was in the

exclusive possession and control of the conditional vendee.

The above contention is based upon the provisions of Civil Code, Section 3543 and the many cases decided thereunder.

Notwithstanding the deprecation of "equity" principles in the case at bar, by the Honorable District Court in its opinion herein, it is respectfully submitted that such equity principles as are embodied in said Section 3543, Civil Code and cases cited below are an important part of the law of this State and are an effective bar to the claim of the appellee herein that its lien should be protected, notwithstanding that it delayed from November 18, 1944, to December 14, 1944, in signing the conditional sales contracts and notwithstanding that it delayed until December 18, 1944, to record the same.

Section 3543 Civil Code provides as follows:

> "Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer."

In *Meadows v. Hampton Live Stock Commission Co.,* 55 Cal. App. (2d) 634, the Court held that a seller who delivered possession of cattle, together with a brand inspection slip, to a company engaged in the business of selling cattle to public stockyards, and who saw the cattle unloaded and knew that they would be offered for sale to others, was "estopped" from claiming title to the cattle as against innocent purchasers from the company which became insolvent, notwithstanding that the purchasers did not receive a bill of sale describing the cattle and bearing the signatures of two witnesses who had been voters of the county for the last two years, as required by the County

Agrcicultural Code. The Court relied on Civil Code 3543, and cited:

Wendling, etc., Co. v. Glenwood, etc., Co., 54 Cal. App. 691;

Pacific Finance Corp. v. Hendley, 103 Cal. App. 335;

Snodgrass v. Ricketts, 13 Cal. 359;

Phelps v. American Mortgage Company, 40 Cal. App. (2d) 361, 366;

Camerer v. Cal., etc., Bank, 4 Cal. (2d) 159, 172.

The last two cited cases hold that although the true owner is guilty of no more than misplaced confidence, such misplaced confidence is negligence within the meaning of Section 3543, so as to disentitle the owner to assert his title against an innocent third party who has dealt with the apparent owner.

Another cognate case is that of

Commercial Credit Company v. Barney Motor Company, 10 Cal. (2d) 718,

in which it was held that trust receipts given by retail automobile dealer to obtain advances from finance company to pay distributor for automobiles used for exhibition and sale were valid title retention documents under the Uniform Trust Receipts Law. However, the Court went on to hold that where the distributor had clothed the retail dealer with all the appearances of ownership or authority to sell, he could not be heard to assert title or ownership against a purchaser for value without actual notice of the reserved title, who would be led by appearances created by the distributor to believe that the dealer had authority to dispose of the title in the usual course of

trade. In short, the original title holder was estopped by his own negligence or mistaken confidence. The Court cited *Rapp v. Fred W. Hauger Motors Company,* 77 Cal. App. 417, 422.

See also: *Northern Assurance Co. v. Stout,* 16 Cal. App. 548; *Fidelity & Casualty Company v. Abraham,* 70 Cal. App. (2d) 776; *Freitas v. Marsh,* 70 Cal. App. (2d) 711.

The foregoing cases are consistent with the general maxim of jurisprudence embodied in Section 3521 Civil Code that:

> "He who takes the benefit must bear the burden,"

and Section 3522 Civil Code that:

> "One who grants a thing is presumed to grant also whatever is essential to its use."

The foregoing interpretation is also consistent with the principle set forth in Section 3529 Civil Code, as follows:

> "That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due."

In the case at bar, that which ought to have been done was the immediate signing of the conditional sales contract by the conditional vendor on or about November 18, 1944, and the recording of the same within twenty days thereafter. It is respectfully submitted that the law will presume, under the circumstances of this case, that the conditional sales contracts were executed as of November 18, 1944.

This is consistent with the language of the contracts themselves, wherein it is provided that the bankrupt "accept" said contracts in the form set forth therein, as follows:

"Accepted QUARTZ CRYSTAL PRODUCTS Co.
Raymond I. Biggy
James F. Collins
John W. Buol
Dated November 10, 1944."

It is thus clear that the parties intended the contract to be complete when the *acceptance* of the contract was accomplished by the conditional vendee by signing the same and delivering it to the conditional vendor. This occurred on November 18, 1944, more than twenty days prior to recordation by the appellee.

The doctrine of "estoppel," which we respectfully submit should be applied herein to bar the lien claim of the appellee, finds further expression and approval in Section 1589 Civil Code, which provides as follows:

> "A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting."

See: *Estate of Bruce,* 27 Cal. App. (2d) 44; *Tonini v. Ericcsen,* 218 Cal. 43; 6 Cal. Jur. 59.

Section 2980 Civil Code, with whose interpretation we are here concerned, is related to Section 2957 Civil Code, concerning mortgages of personal property or crops. That

section provides that such mortgages are void against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith, unless they are

> ". . . acknowledged, or proved and certified, in like manner as grants of real property . . ."

It is clear from the foregoing statute, as well as from Section 2956 Civil Code, prescribing a model form of personal property mortgage, that no signature of the mortgagee is required in order to obtain a valid mortgage of personal property—just as no signature of a grantee is required on a grant deed of real property. Similarly, it is submitted, the signing of a conditional sales contract by a conditional vendor is not a prerequisite to its validity.

Thus, in conclusion, it is respectfully submitted that neither the language nor the purpose of the statute, nor the conduct of the parties, nor the law relating to similar security transactions, require the signature of the appellee to complete the execution of the conditional sales agreements involved in this case. Furthermore, it is respectfully submitted that in any event, under the circumstances of the case at bar, the appellee is estopped from denying execution of these contracts after November 18, 1944. From this, it is submitted that both of said conditional sales contracts are void under Section 2980 Civil Code, for want of recordation within the requisite statutory period.

POINT II.

The Amount Due the U. S. Machinery Company by the Bankrupt Under Said Contracts Was the Sum of $2,368.15 and the Receipt of $3,700.00 by the Said U. S. Machinery Company From the Sale of the Equipment Under Said Contracts Left a Surplus Due and Owing to the Trustee and the Estate Herein in the Amount of $1,331.85.

It follows from the argument set forth in Point I above that the arithmetical conclusion of Point II should be adopted. There is an additional reason, however, why this result should follow, at least with respect to the mining machinery and equipment which was the subject of the sale to Pete De Michelis, as more particularly set forth in the Statement of Facts herein.

With respect to that personal property, both the appellant and the appellee have now signified their approval of the sale to Michelis of said property for $3,700.00.

Therefore, whether the conditional sales contracts herein be valid or void, under Section 2980 Civil Code, should not affect the result herein in so far as said property is concerned.

It is therefore respectfully submitted that the order of the Honorable District Court Judge herein should be reversed, and the appellee be ordered to pay to appellant the sum of $1,331.85, on the ground that the sale of the said mining machinery and equipment to Michelis have been ratified both by appellant and appellee.

Respectfully submitted,

GEORGE T. GOGGIN,

MARVIN WELLINS,

Attorneys for Appellant.